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Legislative Handbook

(Second Edition)



Montana Legislative
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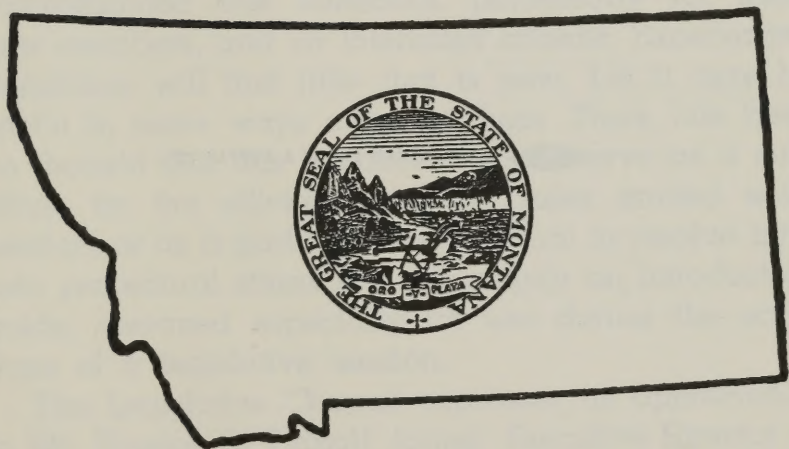
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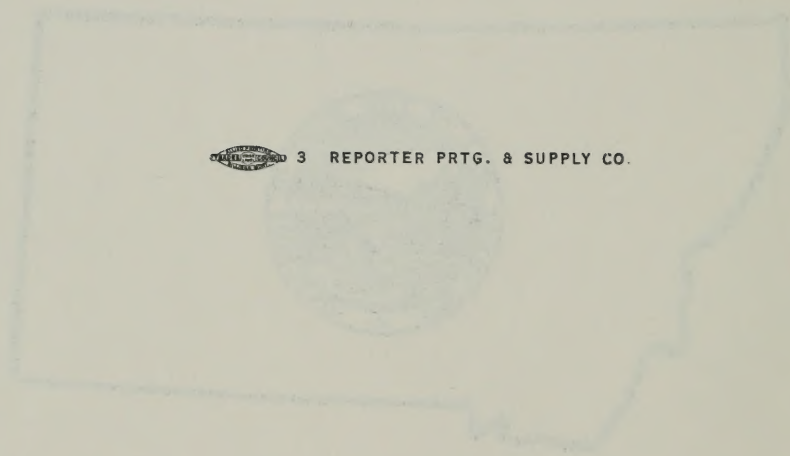
Legislative

Journal

(Volume 1, Number 1)



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Legislative

Journal

INTRODUCTION

A Legislative Assembly in session affords an exciting, absorbing study of politics in action, for legislators and observers alike. The advent of a session quickens the pulse of the capital city, and of all the interests, public and private, which may be affected by the decisions of the legislature.

The Legislative Assembly meets for just sixty days every other year in Montana. A substantial number of the members each session are serving for the first time, and for these new members there is much to learn and little time. The Montana Legislative Council commissioned this handbook particularly for these new members, and for interested citizens. Experienced legislators will find little that is new, but it may be useful in some ways even for them. There has been no thought that this handbook would serve as a substitute for the official legislative rules printed each session, or as a parliamentary manual to resolve intricate procedural situations. It is simply an introductory guide, designed especially for use during the early days of a legislative session.

The Legislative Council expresses its appreciation to Mr. Eugene C. Tidball, former Executive Director of the Legislative Council, and to Dr. Thomas Payne and Dr. Ellis Waldron of the University of Montana for their assistance in preparing this revised edition of the Handbook. The Council also acknowledges the assistance of a number of legislators who read the manuscript and offered suggestions for its improvement.

August 1966

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1. THE MONTANA LEGISLATOR¹

Qualifications

Montana state legislators are required by the state constitution to be citizens of the United States and residents of the county from which elected during the twelve months preceding election. Representatives must be at least 21 years old, and senators at least 24 years of age.

Election and Term of Office

State senators are elected for terms of four years, one half at each biennial general election. Thus the senate is a continuing body, with half of its members each session having served in the prior session. All representatives are elected for two-year terms each biennial general election so that potentially the entire membership of the house of representatives could change in an election. The legislature itself has modified the original constitutional provision to make the term of service of legislators start with the legislative session—the first Monday of January of the odd-numbered year after their election. No legislator may be appointed to any state "civil office" during the term for which he was elected; and no federal or state officers, except notaries public and militia officers, may retain those offices while serving in the state legislature.

¹ See page 18 for a discussion of the court ordered reapportionment applying to members elected in the 1966 primary and general election.

Certification

The certificate of election issued by the Secretary of State is prima facie evidence of right of membership for all purposes of organization of the legislature. However, each house is the sole and final judge of elections, returns and qualification of its own members both for initial seating and for subsequent discipline or expulsion.

Vacancies

Vacancies created by death of a member of either house are filled by appointment by the board of county commissioners of the county in which the vacancy occurs.² Vacancies for some cause other than death are filled by special election upon proclamation by the Governor.

Privileges and Immunities of Members

The historic protection of members from arrest "in all cases, except treason, felony, violation of their oath of office, and breach of the peace" amounts primarily to a protection against arrest in civil suits during attendance at sessions, or en route to or from a session. It probably does not protect against service of either civil or criminal process, nor is it a protection against

² The court ordered apportionment plan to be used in 1966 for election of members to the 1967 legislature is silent on how vacancies as a result of death shall be filled, but the court plan has many districts comprised of more than one county.

criminal arrest. There is also the constitutional protection of members, that "for any speech or debate in either house they shall not be questioned in any other place" in a manner that would involve legal liability for their utterances.

Compensation

By law most recently amended in 1955, members of the legislature receive twenty dollars a day as a per diem payment during the session. In practice this payment is made for sixty days only, and paid weekly. The per diem payment of the president of the senate and of the speaker of the house is twenty-five dollars. Legislators have appropriated and received the per diem payment during extraordinary sessions, but these special sessions also are presumably limited to not more than sixty days duration.

Members of the legislature also receive fifteen dollars a day as reimbursement for expenses incurred in attending the session. This payment was authorized by the 1965 Legislative Assembly and will apply to all members of the 1967 legislature.

Travel Allowance

Members of the legislature are entitled to a travel allowance of eight cents a mile for one round trip during the session from their place of residence to the place of the session, by the nearest travelled route.

Bills to appropriate the per diem payments, reim-

bursement for expenses, and mileage allowances are commonly enacted during the early days of the session and the travel allowance usually is received along with the payment for the first week.

2. LIVING IN HELENA

Housing

The legislator is required to be in Helena during the legislative session, but accommodations are a matter of personal responsibility and preference. Some legislators bring their families; others come alone to the capital city.

A few members, of course, live within daily commuting distance of their homes, but nearly all members establish a residence in Helena during the session. Many return home on weekends during the early weeks of the session, but by midsession the legislature commonly sits on Saturdays and Sundays.

Housing is found in hotels, motels, private clubs, apartments, and rooms in private homes. In 1965 all members but two listed a Helena address. Their preference by type of accommodation was as follows: in five hotels 20%; in seven motels 23%; in one private club 1%; in seventy-four apartments or private dwellings, 56%. The classified section of the Helena newspaper carries information about apartment and residential facilities, and some members visit Helena soon after election to arrange housing.

Restaurants

Each legislator must solve this problem within the limits of his own taste, transportation facilities, and the pace of the session. Light lunches and snacks are served at concession counters in the corridor between the legislative chambers, in the basement of the Capitol, and in the basement of the Sam Mitchell building nearby. There are many restaurants in and near Helena, but few are within convenient walking distance from the Capitol building.

Capitol Hill

The legislative chambers are situated in the west wing of the Capitol on the third floor, along with committee rooms on the third and fourth floors, and staff and office quarters for legislative officers. The Supreme Court and its library are in the east wing on the third floor. The second floor houses the executive suite of the Governor; other elected state officers and several principal administrative agencies are located on the ground and second floors of the Capitol. Many state offices and agencies are located in several state buildings nearby.

Parking

During the legislative session, the broad curved driveway to the front entrance of the Capitol and the circular driveway behind the Capitol are reserved for parking by legislators. Parking stickers for members are furnished by the Department of Administration.

Facilities for Legislators

Small individual lockers are available for legislators, but office space is available only for the president of the senate, speaker of the house, senate and house majority leaders, and the senate and house minority leaders.

Some of the busiest committees—those on revenue and appropriation in each house, and the judiciary committees—have committee rooms dedicated to their exclusive use during the session, and these rooms serve in part as offices for their chairmen. Most committees share office and meeting space with two or three other committees in rooms assigned on the fourth floor of the Capitol behind the house galleries, around the central rotunda, and above the Supreme Court chambers in the east wing.

Close scheduling of committee meetings is required because of limited space for committee meetings. Times are blocked out for various committees to meet, but in practice much of the detail is arranged among committee chairmen from day to day. Committee meetings are announced and posted in each house, usually at the end of morning and afternoon sessions.

Telephones

There is a branch telephone exchange in the Capitol, and telephones used by staff are served through

this exchange, including those in the offices of the clerks, sergeants-at-arms, and some of the committees.

A telephone room is available to legislators, located off the corridor between the two chambers, where legislators may make telephone calls through the Capitol exchange. In addition a number of pay-station telephones operating through the central Helena exchange are conveniently located near the legislative chambers.

Mail

A branch post office is situated on the ground floor of the Capitol, and legislators are assigned individual post boxes. The legislature appoints an assistant to work with the capitol postmaster during the session.

Clerical Staff

Each house employs a large staff of clerical assistants during the session. A number of these clerks and stenographers are assigned to serve with particular committees and officers, and others are in a general stenographic pool, from which members call upon their services to help with correspondence and preparation of legislative papers and documents.

News Reporting

Relations of the legislator with representatives of press, radio, and television range from the most casual contacts to close daily communication, depending upon

acquaintance, experience, seniority, and influence.

Representatives of the two major news wire services, Associated Press and United Press International, are in daily attendance at sessions and their reports are distributed to newspapers and radio stations across the state. In addition, at least one newspaper chain maintains a correspondent continuously at the Capitol. Other correspondents serve one or more individual newspapers, radio stations, and interest groups of various sorts during the legislative session on what amounts to a contingent or fee basis. When matters of special public interest develop, the news services commonly send additional representatives to provide added coverage.

Facilities for the news correspondents include a press table at the front of each chamber below the rostrum, and a press room.

Lobbying and Lobbyists

Lobbyists outnumber legislators in Helena during a session. Despite distrust of their name and function, they exercise a vital but unofficial role in the legislative process. Obviously, whether they speak for private economic interests, or religious or social organizations, or indeed for agencies of the state government itself, they express specialized interests and views. Frequently they convey vital information and experience which help the legislator to judge the consequences of legislative action. In this sense, they are a legiti-

mate and necessary part of the representative process of government.

The 1959 Legislative Assembly enacted a lobby control act which requires all lobbyists to register with the Secretary of State. This act may be found in Chapter 8, Title 43, R.C.M. 1947. Legislative rules prohibit lobbying on the floor of the assembly during a session and within one-half hour prior to the commencement of a session (Joint Rule 2-4), and also prohibit an employee of the legislature from lobbying as defined by law (Joint Rule 3-12).

Illegal Activities

A statute, (Section 94-2913, R.C.M. 1947), makes it a felony to "improperly" influence the actions of a legislator "in any vote or legislative matter," but there is no indication what constitutes impropriety, beyond perhaps the companion statutes relating to bribery.

The state constitution (Sections 41 through 44, Article V), and Chapter 29, Title 94, R.C.M. 1947 define certain illegal kinds of conduct immediately related to the legislature and its members. Bribery, vote-trading, and solicitation of bribery of legislators, or by the legislators, and lobbying "improperly" in regard to legislative matters, constitute felonies. Section 82-1922, R.C.M. 1947 makes it a misdemeanor for a legislator

to contract with the state, or have an interest in a contract with the state. Section 59-501, R.C.M. 1947 also prohibits members of the legislature from having an interest in a contract made by them.

When the legislator has "a personal or private interest in any measure or bill proposed or pending" the constitution (Section 44, Article V) appears to require disclosure of the interest and prohibit voting upon a measure. A statute (Section 94-2911, R.C.M. 1947), approaches the matter somewhat differently, making it a misdemeanor to vote upon such a matter, not having disclosed the interest.

3. STARTING THE SESSION

Party Organization and Caucus

The political parties whose organization and activities were so apparent in the November election are also prime movers in organizing the legislature for business when it meets two months later. Each party functions in the legislature through its caucus—a meeting of its members elected to each house. In other words, there are four caucuses, one Democratic and one Republican in each of the two houses of the legislature. On occasion members of a party from both houses may meet in joint caucus, but more commonly communication between party members in the two chambers is through the policy committees of each caucus.

The senior member (in terms of legislative service) of each party in each house issues the call for the organization caucus of his party colleagues. These calls are sent out as letters in December or earlier, noting the time, place, and purpose of the organization caucus.

Before the opening day of the session the four caucuses meet in Helena, traditionally at the Placer Hotel. In recent years, the majority party of the house of representatives has caucused a month or more prior to the session. Nominations are made and adopted by simple majority vote for officers of each chamber

to be formally acted upon in the legislature the opening day.

The senate caucuses prepare a slate which includes nominees for a president pro tem and floor leader, secretary, sergeant-at-arms, chaplain and the committee on committees. The proposals of the majority caucus will be adopted the next day, and the work of the minority caucus will have been in vain except to designate the minority leader.

The house caucuses choose their slates for speaker, speaker pro tem, floor leader, clerk, sergeant-at-arms and chaplain, with the expectation, of course, that the persons designated by the majority group will actually be approved by the house in session the opening day.

Seating Arrangements

A committee of each caucus arranges seating of its delegation. By long practice Democratic party members sit right of the center aisle (facing the rostrum) and Republican party members occupy the left side of the chamber. As the aisle divides the number of seats equally in each house, some members of the majority party occupy seats at the back of the chamber, on the minority side of the aisle. The majority and minority leaders occupy seats on the center aisle, approximately in the center of the chamber. Re-elected members usually retain the seats they had in previous sessions, and new members are interspersed among

the more experienced colleagues rather than segregated in any particular part of the chamber.

Opening Ceremonies

Members of each house convene in their respective chambers at noon on the first Monday of January for opening ceremonies partly prescribed by law, but largely governed by traditional observances.

The lieutenant governor calls the senate to order and the majority leader-designate nominates a temporary secretary—the person soon to be elected as secretary of the senate. The roll is then called of hold-over senators from the previous session. On motion of the majority leader, the president appoints a committee to escort the chief justice of the supreme court to the senate rostrum. The roll is called of newly-elected senators, who present their certificates of election to the president. When this has been done, the chief justice administers the oath of office to the senators-elect. The roll of all senators then is called to establish presence of a quorum, and the senate proceeds with its organization, electing a president pro tem and majority leader, a committee on committees, committee on legislative administration, a secretary, sergeant-at-arms and a chaplain.

On motion of the newly-elected majority leader, the senate adopts rules of the prior assembly as its

temporary rules. Temporary committees are designated to advise the governor and the house that the senate has completed organization, and to invite elected state officers to attend the joint session for the governor's message of the second day.

A similar process takes place in the house of representatives, except that a presiding officer must be elected. At noon the secretary of state calls the house members-elect to order and appoints a temporary chaplain, sergeant-at-arms, clerk and journal clerk. After an invocation by the chaplain, the temporary clerk calls the roll of members-elect, who present their certificates of election. An associate justice of the supreme court then administers the oath of office to the elected members.

The secretary of state calls for nomination of a speaker, and nominations are made by majority and minority floor leaders. The majority nominee is elected by roll call vote and a committee appointed by the secretary of state escorts the speaker to the rostrum to preside over the house. On motions of the majority leader, the house adopts rules of the previous session as its temporary rules and elects a speaker pro tem, majority floor leader, clerk, sergeant-at-arms, and chaplain.

The speaker then announces membership of temporary committees to advise the governor and senate that the house is organized, and he names members

of the legislative administration committee.

Early in the afternoon of the second day, the senate proceeds to the house chamber for a joint session to hear the governor's opening address to the legislative assembly. The president of the senate presides, appoints a joint committee to escort the governor to the session, and introduces the chief executive. At the close of the address the senate majority leader moves that the address be printed, and that the joint session be dissolved.

The First Two Weeks

Much of the activity during the early days of the session is directed to organization of committees and staff to handle the flood of legislation soon to come. The speaker of the house announces his appointments of house committee members. In the senate, the same function is performed by the committee on committees. The committee on legislative administration in each house considers and recommends hiring of dozens of legislative employees during these early days. Though concentration is on organizational matters for the first two weeks of the session, during the 37th through the 39th sessions the average total number of bills introduced during that period was thirty-seven in the senate and ninety-five in the house. The recent tradition of early caucuses has apparently had the effect of accelerating legislative organization.

For the new legislator especially, these early days afford opportunity to master the novel details of living in Helena, and to become acquainted with fellow legislators, employees, lobbyists, and press representatives. He learns to handle correspondence and communications with constituents and to meet those who visit him at the Capitol. Perhaps most important of all he begins to acquire some of the "feel" of the legislative process while it still moves slowly into its functions, and to decide whom he will trust as leaders and advisors in the rush of business which will descend upon him in full flood in the weeks to come. For legislation is a group process—the result in most instances of activities of many persons.

Before the session begins, the newly elected member should give some thought to the committees on which he wishes to serve. Re-elected members often continue service on committees from session to session, but there is no rigid assurance that seniority claims to committee positions will be honored. In recent sessions senators and representatives have served on an average of three committees per member while some on the vital appropriations and revenue committees have been appointed to one or two committees only.

Each legislator should know the bills which come

before the committees on which he serves, as well as those relating to matters in which he has special interest or competence. But a legislature operates by division of its labors and many times the legislator will act and vote according to the recommendations of others. He must frequently depend upon the standing committees of each house and upon party leaders and respected senior colleagues for guidance of his own actions and decisions.

4. THE MONTANA LEGISLATIVE ASSEMBLY

Structure

The Legislative Assembly of the State of Montana, to give its official title, consists of the senate and the house of representatives. As a result of federal court reapportionment, the 1967 Legislative Assembly will consist of 55 seniors elected from 31 districts, and 104 representatives elected from 38 districts. Members of the senate are elected for four-year terms; members of the house are elected for two-year terms.

Basis of Representation

Prior to 1965, one senator was elected from each county. Representation in the house was based partially on population, but at least one member was elected from each county. On January 13, 1965, a federal district court ruled that this basis of apportionment was invalid, but the court declined to change the basis of representation pending action which might be taken by the 1965 legislature. The 1965 legislature failed to agree on a different basis of apportionment, and on August 6, 1965 the federal district court established a temporary basis of apportionment applying to all members elected in the 1966 primary and general elections. The court order terminated the term

of office for all members of the 1965 legislature on December 31, 1966, and ordered the election of all members for the 1967 legislature under the court apportionment plan. Because terms of senate members are staggered, (one-half elected every two years), the court provided for drawing lots in 1967 to determine which senate members would serve two-year terms initially and which members would serve four-year terms. The court apportionment plan has also resulted in some changes in election procedures. For example, candidates for the legislative assembly now file with the Secretary of State. The Secretary of State will also receive and canvass election returns.

It should be noted that the court apportionment plan is temporary, and it may be changed by the 1967 legislature. The court, however, has retained jurisdiction until the close of the 1967 session. Jurisdiction was retained to judge and pass on the validity of any apportionment plan adopted by the 1967 Legislative Assembly to insure compliance with the equal protection clause of the federal constitution. If the 1967 legislature does not adopt a new apportionment plan, the court will decide whether protection of the public interest requires further retention of jurisdiction.

Legislative district numbers, members to be elected from each, counties within the districts, and the average population per member are shown in the tables at the top of the next page.

Table 1
MONTANA SENATE
(55 members)

Senatorial District Number	Number of Senators	District Consists of County or Counties	Population Per Senator
1	1	Carter, Fallon, Wibaux, Prairie	10,506
2	1	Dawson	12,314
3	1	Richland and McCone	13,825
4	1	Roosevelt	11,731
5	2	Valley, Daniels, Sheridan	13,649
6	1	Rosebud, Treasure, Garfield, Petroleum	10,407
7	1	Custer	13,227
8	1	Big Horn and Powder River	12,492
9	6	Yellowstone	13,169
10	1	Phillips, Blaine	14,118
11	1	Fergus	14,018
12	1	Musselshell, Golden Valley, Wheatland, Sweetgrass	12,407
13	1	Carbon, Stillwater	13,843
14	1	Park	13,168
15	2	Gallatin	13,022
16	1	Jefferson, Broadwater, Meagher ..	9,717
17	1	Chouteau, Judith Basin	10,433
18	6	Cascade	12,236
19	2	Hill, Liberty	10,639
20	2	Toole, Pondera, Teton	11,426
21	2	Lewis and Clark	14,003
22	2	Deer Lodge, Powell, Granite	12,821
23	4	Silver Bow	11,613
24	1	Beaverhead, Madison	12,405
25	1	Ravalli	12,341
26	4	Missoula	11,166
27	1	Sanders, Mineral	9,917
28	1	Lake	13,104
29	1	Glacier	11,565
30	3	Flathead	10,988
31	1	Lincoln	12,537

Table 2
MONTANA HOUSE
(104 members)

Represent- ative District Number	Number of Represent- atives	District Consists of County or Counties	Population Per Representative
1	2	Carter, Fallon, Wibaux and Prairie	5,253
2	2	Dawson	6,157
3	2	Richland and McCone	6,913
4	2	Roosevelt	5,865
5A	1	Sheridan	6,458
5B	3	Valley, Daniels	6,945
6	2	Rosebud, Treasure, Garfield and Petroleum	5,204
7	2	Custer	6,614
8	2	Big Horn and Powder River	6,246
9	12	Yellowstone	6,584
10A	1	Phillips	6,027
10B	1	Blaine	8,091
11	2	Fergus	7,009
12A	1	Musselshell and Golden Valley	6,091
12B	1	Wheatland and Sweet Grass	6,316
13	2	Carbon and Stillwater	6,922
14	2	Park	6,584
15	4	Gallatin	6,511
16	2	Jefferson, Broadwater, Meagher	4,858
17	2	Chouteau and Judith Basin	5,217
18	11	Cascade	6,674
19	3	Hill and Liberty	7,092
20A	1	Toole	7,904
20B	1	Pondera	7,653
20C	1	Teton	7,295
21	4	Lewis and Clark	7,001
22A	1	Powell	7,002
22B	3	Deer Lodge and Granite	7,218
23	7	Silver Bow	6,635

Representative District Number	Number of Representatives	District Consists of County or Counties	Population Per Representative
24A	1	Beaverhead	7,194
24B	1	Madison	5,211
25	2	Ravalli	6,170
26	7	Missoula	6,380
27	2	Sanders and Mineral	4,953
28	2	Lake	6,552
29	2	Glacier	5,783
30	5	Flathead	6,593
31	2	Lincoln	6,268

Legislative Sessions

The Montana Legislative Assembly convenes in regular biennial session in the State Capital at noon on the first Monday of January of odd-numbered years following the November general election in even-numbered years.

Regular sessions are limited to sixty calendar days, and the actual days of meeting are somewhat less because of weekend adjournments during the early part of the session. Neither house may adjourn its session for more than three days without consent of the other house. Nor may one house move its sessions from the customary place without consent of the other house.

It is a common practice in Montana, as in other states which have a limit on the duration of legislative sessions, to "stop the clock" during the sixtieth legislative day, and to continue work into succeeding calendar days to complete the legislative process. The procedural fiction is maintained in the senate and house journals that all the events of these extra days transpired on the 60th "legislative day," and the courts have refused to look behind this formal record, when the pleas have been made that legislation enacted under this arrangement was illegal. Legislators do not receive compensation for these extra days, and in practice sessions seldom are extended by more than a few calendar days.

The Governor may summon special sessions of the legislature by proclamation stating the purposes of the session, and the legislature is limited to enactment of legislation upon the subjects specified by the Governor. The last extraordinary session was called by Governor Frank H. Cooney and met from November 27, 1933, to January 19, 1934. The Governor may also call the senate alone into special session for transaction of executive business such as confirmation of appointments.

Officers

Each house elects its own officers except that the Lieutenant Governor serves as president of the senate. The house elects a leader of the majority party mem-

bership as speaker; each chamber elects a president or speaker pro tempore and a majority floor leader from among its members. The senate elects—in effect hires—a secretary, a sergeant-at-arms and a chaplain, none of them senators; and the house similarly elects a chief clerk, a sergeant-at-arms and a chaplain who are not representatives. Additional legislative employees are hired on recommendation of the legislative administration committee in each house, these recommendations being approved by vote of the chamber during early days of the session.

Rules of Procedure

Under the Montana Constitution each house has the power to determine its own rules of procedure. In Montana, as elsewhere, the continuity of rules and practice is great because the rules of the previous session are adopted as temporary rules in the opening moments of the new legislative session.

In 1965, after an interim study by the Legislative Council, the legislature adopted new rules, which for the most part, are the same for both houses. Both houses use **Mason's Manual of Legislative Procedure** for matters not governed by specific legislative rule.

Discipline

Each house may prescribe the punishments to be imposed upon its members for disorderly conduct,

contempt or other offenses. Either house may expel a member by a two-thirds vote. Any member of either house expelled for corrupt practices is automatically ineligible to serve again in any capacity in the legislature.

Committees

All senate committees, special or standing, and all senate members of joint committees, except conference committees, are selected by a committee of three members elected by the senate. All committees so appointed must be reported to the senate, and memberships become effective only after ratification by the senate. A majority of the senate may vote to change the membership of any committee after giving one day's notice of its intention. The president of the senate appoints members to conference committees with the advice of the majority and minority floor leaders.

House committees, standing or special, are appointed by the speaker of the house unless otherwise specifically ordered by the house.

In the Thirty-ninth Legislative Assembly (1965) there were 23 standing committees in the senate and 18 in the house. Table 3 lists these committees and the number of members on each committee. The number of members on senate standing committees is the maximum number specified by rule. The maximum number on house standing committees, except appropriations and education, is fifteen as specified by rule.

Table 3**Standing Committees and Number of Members in the
Thirty-ninth Montana Legislative Assembly (1965)****Senate Standing Committees**

- | | |
|--|--|
| 1. Agriculture—11 | 13. Legislative Administration—5 |
| 2. Banking and Insurance—9 | 14. Local Government—11 |
| 3. Bills—6 | 15. Natural Resources—9 |
| 4. Commerce and Labor—11 | 16. Public Health, Welfare and Safety—11 |
| 5. Committees—3 | 17. Public Lands—9 |
| 6. Constitution, Elections and Federal Relations—9 | 18. Rules—5 |
| 7. Education—11 | 19. State Administration—9 |
| 8. Finance and Claims—11 | 20. Stockgrowing and Grazing—11 |
| 9. Fish and Game—11 | 21. Taxation—9 |
| 10. Highways and Transportation—11 | 22. Journal—3 |
| 11. Irrigation and Water—9 | 23. Reapportionment—11 |
| 12. Judiciary—9 | |

House Standing Committees

- | | |
|---|--|
| 1. Affairs of Cities—15 | 11. Labor and Compensation—15 |
| 2. Agriculture and Irrigation—15 | 12. Legislative Administration—5 |
| 3. Appropriations—17 | 13. Livestock and Ranges—15 |
| 4. Bills—5 | 14. Public Health, Welfare and Safety—15 |
| 5. Business and Industry—15 | 15. Rules and Journal—5 |
| 6. Constitution, Elections and Federal Relations—15 | 16. State Administration—15 |
| 7. Education—17 | 17. Townships and Counties—15 |
| 8. Fish and Game—15 | 18. Ways and Means—15 |
| 9. Highways—15 | |
| 10. Judiciary—15 | |

The Legislative Council

The Montana Legislative Council is a permanent interim agency of the legislature, created by law in 1957, with members from both houses. Generally, the Council was created to perform services which facilitate the legislative process. Forty-three states and one territory now have operating legislative councils or council-type agencies.

The Legislative Council consists of six members of the House of Representatives appointed by the Speaker, and six members of the Senate appointed by the Committee on Committees. The law requires that no more than three members of each house be of the same political party, so the membership of the Council is always strictly bi-partisan.

The law creating the Council provides that it shall elect one of its members as chairman and such other officers as may be desirable. The Council is also empowered to appoint special committees composed of other legislators, private citizens, or both, to study and inquire into any specific governmental problems. To secure the advice of as many legislators as possible, the Council has traditionally arranged for the appointment of non-council member legislators to its subcommittees. Recently as many as forty legislators have served on Council subcommittees during a single

interim. The Council also utilizes the services of faculty members of the University system and officers and employees of other state agencies as advisors and members of task forces.

The Council is empowered by law to adopt rules of procedure and make all arrangements for its meetings. Complete minutes are maintained and are open to inspection by any member of the legislature.

The Legislative Council is charged by law with the responsibility to compile, analyze and furnish to the legislature "such information bearing upon any matters relating to existing or prospective legislation as may be determined by it upon its own initiative pertaining to important issues of policy and questions of statewide importance . . . "The Council is also to present to the legislature "such bills and resolutions as in its opinion the welfare of the state may require . . . " Other provisions of the act creating the Legislative Council give it authority to investigate and examine the costs of state governmental activities and to examine and inspect the records of any agency or institution of state government. The Council also has authority to hold hearings, administer oaths, and issue subpoenas.

Under this broad grant of statutory authority, the operation of the Legislative Council has gradually evolved into two distinct programs.

One of the programs is undertaking a number of

major research projects. Usually these studies are assigned by a joint resolution approved during the previous legislative session, although the Council may undertake studies on its own initiative. In conducting interim research the Council does not purpose to act for the legislature; its only function is to detect important problems of state government, and submit factual material, conclusions, and recommendations for the consideration of the legislature.

Although the Council staff performs most of the interim research, it does not operate in a vacuum. An important feature of major studies conducted by the Council is the active participation of legislators, advisory groups and subject matter experts in the successive stages of problem definition, research, and analysis of findings. The formulation of conclusions and recommendations is the exclusive responsibility of legislators serving on the various Council subcommittees.

Equally important as the major research projects undertaken during the interim, are staff services to individual legislators. Although the professional staff is employed by, and operates under, the general direction of the Council, the services offered to individual legislators are completely independent of any supervision by Council members.

On request the staff will prepare impartial factual reports on various topics of interest to any member

of the legislature. Such requests often ask for detailed information on the operation of a particular state agency, and sometimes involve gathering comparative information on what other states are doing on a particular subject. All requests by legislators for "spot research" work of this nature and the responses to such requests are kept strictly confidential.

As an aid in performing such research, a legislative reference library containing thousands of books, pamphlets and reports relating to the operation of state government is maintained in the Council offices.

The second major program is staff service to individual legislators through the Council's bill drafting service. The Council staff, within limitations of time and personnel, draft bills on any subject for any member of the legislature. During the two months preceding the legislative session and during the twenty-day period of introduction of bills, the entire Council staff devotes most of its time to drafting of legislation requested by individual members. Since the bill drafting service was inaugurated in 1959, the Council staff has drafted more than one thousand bills at the request of individual legislators. During the 1965 session, more than 350 bills and 100 amendments were drafted by the Council staff.

Legislative Documents

A great flood of printed matter descends upon the members of a legislative assembly. Each member is the focus of a stream of papers, and only those of official character which furnish the working materials of the great majority of members are mentioned here.

Bills and Resolutions: A bill is prepared for introduction by having it typewritten in quadruplicate on legal paper with ruled margins and numbered lines. Joint Rule 6-2 requires that these copies have a cover of "substantial material" upon which the various steps in the legislative history of the bill are endorsed by clerks as it moves from place to place through the legislative process.

When introduced, the bill is mimeographed in sufficient number for members of the legislature and for others particularly interested in it such as the press, constituents, and lobbyists who might wish to discuss the bill during a committee hearing. These mimeographed copies are prepared and distributed by the senate secretary and the house clerk, and fill a vital need, for bills are not printed ordinarily until they receive favorable report from standing committee.

According to Chapter 9, Title 43, R.C.M. 1947, any non-legislator who is not an elected state official, state department head, county clerk and recorder, or press

representative must pay for copies of "proceedings of the legislature." "Proceedings of the legislature" include status sheets, status of proceedings, mimeographed bills, resolutions, and amendments to any of these. A complete set of proceedings costs \$100, single copies of bills cost \$.25, and status sheets \$.10 each. All fees are paid to the Secretary of State, chief clerk of the house or secretary of the senate and are placed in the general fund.

When a committee has considered a bill and recommended its adoption, one thousand copies of the bill are printed. Legislative staff place copies of these printed bills on the desks of members, available in time for the consideration of the bill on second reading in committee of the whole. This is the first stage at which bills are considered by the entire membership of the chamber.

Each member is allowed five sets of printed bills which he can direct the secretary or clerk to mail out as they are printed to local newspapers or to constituents.

Amendments to the printed bills are mimeographed on colored paper and distributed for insertion into the bills on members' desks. Sometimes bills are reprinted, or substitute bills are introduced, if amendments have been extensive.

Thus, in committee of the whole the member can work with printed copies of all bills of either house

which have reached second reading and at third reading he has supplementary papers indicating amendments adopted in committee of the whole.

Records of Proceedings

The basic record of legislative proceedings is the **journal** of each house, kept by journal clerks to record all formal actions of the legislature. These **proceedings** are mimeographed each day of the session, and each day opens with a formal adoption of the journal entries of the previous day. At the end of the session the journals are indexed to show each formal action on each bill, and printed in volumes of several hundred pages each for the senate and the house.

Usually the legislator will be more concerned with daily **status sheets** issued in mimeographed form by the senate secretary and the house clerk. The status sheet of each house shows at a glance the location or disposition of all its bills, and of all bills of the other house which have come to it for action. Thus, each morning it is possible to learn quickly the situation of any one of the hundreds of bills and resolutions introduced as the session progresses. After the session a final status sheet is prepared for each house, showing the ultimate fate of each bill and resolution introduced.

Committee Records: The member may be interested at times in the minutes of standing committees on

which he serves, or which act upon bills in which he is interested. These minutes are kept in typewritten form by secretaries, and vary in detail from brief entries of actions to complete stenographic transcripts of statements made before the committee in public hearings. Report forms are also printed and used to record actions of committees on individual bills referred to them, and copies of these reports of individual bills are usually kept along with the committee minutes in the committee rooms. All committees must keep minutes of their meetings and, at the close of the session, turn the minutes over to the chief clerk of the house or secretary of the senate for delivery to the Historical Society (Joint Rule 7-4).

The Biennial Budget: Each member receives a copy of the proposed biennial budget submitted by the budget director early in the session.

Agency Reports: Various state agencies submit annual reports and other documents relative to their work and problems. The Legislative Council submits copies of its studies and reports to members of the legislature; committees appointed by the Governor may also report to the legislature.

Bill Drafting

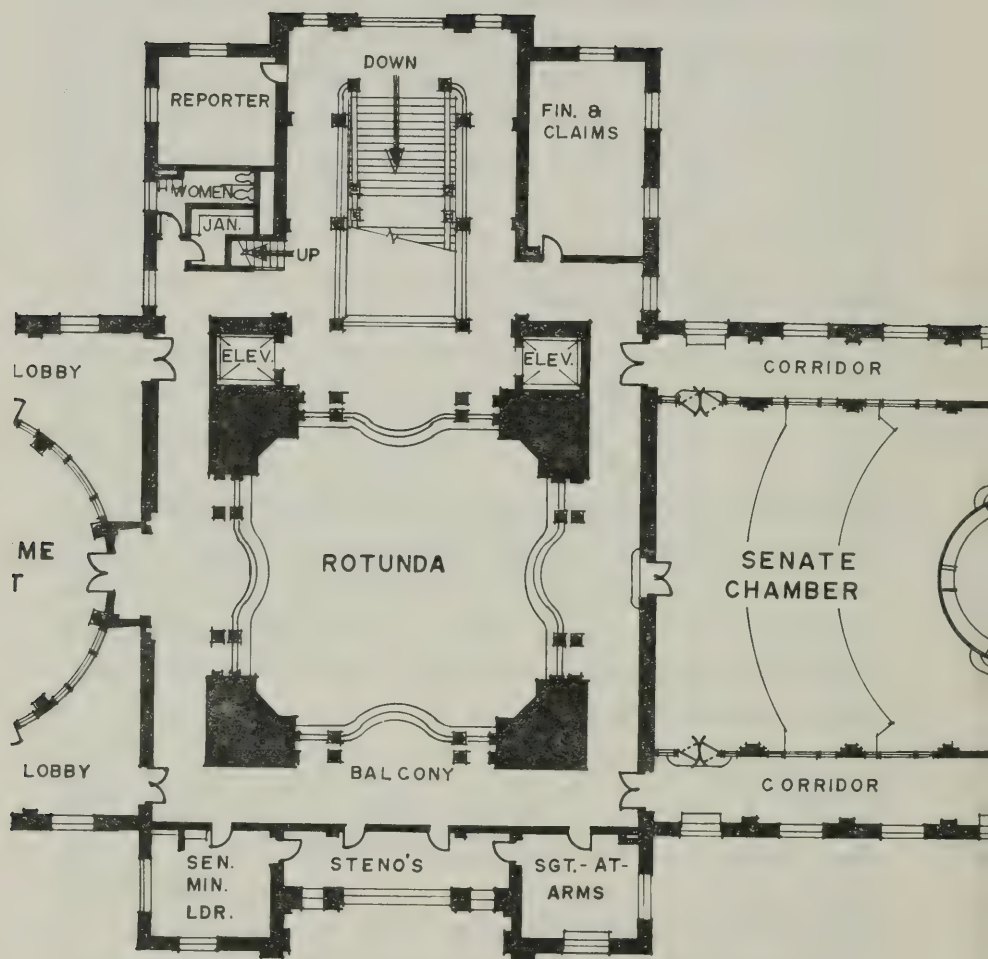
The Legislative Council staff, private attorneys employed by those interested in the proposed laws, and official agencies draft bills prior to and during the

legislative session. The Council staff drafts bills on any subject for any member of the legislature. The office of the Attorney General and legal counsel of several state agencies originate drafts of legislation sought by public officers, departments, and commissions of the state government. To assist persons drafting bills, the Council has prepared a **Bill Drafting Manual**. Copies are available without charge from the Council office.

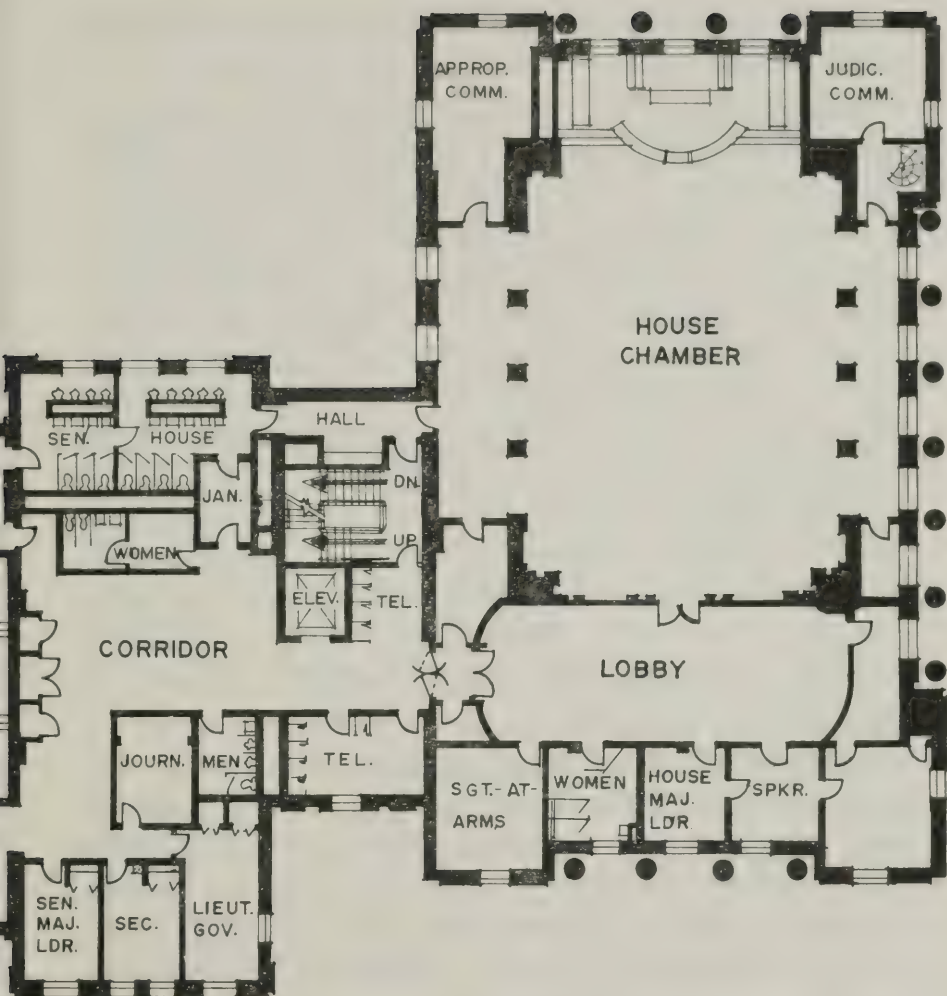
How to Find "The Law"

A learned profession exists to serve this need, but in a free and literate society which prides itself on "the rule of law" every informed lay citizen and legislator can readily inform himself of the content of statutes and constitutions. For many purposes, of course, there is no substitute for employment of legal counsel, but every man can know much of the law to which he is accountable, and experienced legislators turn continually to existing statute law for guidance of their actions.

Montana statutes can readily be found in two places. A volume of **session laws** is published after each session of the legislature, containing all the enactments of the particular session; and the nine-volume **Revised Codes of Montana, 1947** contains all of the statutes currently in force, in a conveniently annotated, encyclopedia-like arrangement. The first volume



MONTANA STATE CAPITOL, THIRD FLOOR



of this Code also reprints the state constitution with useful annotations.

Session Laws: As bills are enacted into law they are sent to the Secretary of State for official custody and publication. In the order received, without regard to subject matter, the Secretary of State assigns each enactment a chapter number. Thus, the first enactment of a legislative session will appear as Chapter 1 of the session's laws; and its last enactments, usually appropriations measures, have been numbered somewhere in the 200's during recent sessions. Each volume of session laws is indexed, and a table of contents gives the title of each enactment and indicates its original number as a house bill or senate bill. But the session laws give little clue to the relationship of an act to related legislation of previous sessions, except by reference to sections modified or repealed.

Revised Codes of Montana, 1947: This set of volumes, the latest in a series of revised statutes of the state, compiles all the statutes of the state existing and in effect, along with notes showing the source of each section in the session laws, and with references to decisions of courts, opinions of attorneys general, and legal digests used by attorneys.

The **Revised Codes** rearrange legislative enactments into an encyclopedia-like alphabetical order

of major subject headings ranging from Aeronautics to Workmen's Compensation; these major subject headings are called **Titles** and each has a number. Thus Title I includes statutes and their annotations relating to Aeronautics; Title 43 relates to Legislature and Enactment of Laws; Title 84 to Taxation; and Title 94 to Crimes and Criminal Procedure. Within each Title, there is a further subject classification into **chapters**; and within these chapters individual parts of statutes are numbered as **sections**. Thus Title 1 relates to Aeronautics and its second chapter to the state aeronautics commission. The sections setting forth details regarding the commission are numbered in the 100's series. Chapter 6 of Title 1 relates the Uniform State Law for Aeronautics, and its sections are numbered 1-601 through 1-606.

Volume Nine of the **Revised Codes** is an index volume by subject matter for the previous eight volumes. One vital caution in use of the **Revised Codes** relates to the use of the **Supplements** to each volume. These "pocket parts" must be replaced after each session of the legislature, and contain the latest additions, amendments, or deletions of material which have accumulated since the volume itself was printed.

Thus the use of the **Revised Codes** is never completed until the "pocket part" or "supplement" to each volume, including the index, has been checked to

determine the latest enactments, or notes to recent interpretations by the courts or attorney general.

Acts of Congress are published in serial volumes of the **United States Statutes-at-Large**, comparable in a general way to the state's session laws. Several editions exist of the **United States Code**, and of the **United States Code Annotated**, publications comparable at the national level to the state's **Revised Codes**.

Similar codes of other states are available in the Supreme Court Library, and they furnish a great storehouse of information about the manner in which other states have approached public problems and policies. Much legislation actually is borrowed, even copied verbatim in some instances, from statutes of other states or from drafts of proposed uniform state laws on various subjects prepared by semi-official law institutes and interstate agencies such as the Council of State Governments.

5. THE LEGISLATIVE PROCESS

The Order of Business

The legislature has determined for itself an outline of "orders" or types of actions by which it will conduct its affairs. A day's session commences, usually at 10:00 a.m., with the preliminary formalities of prayer, roll call and report on the journal of the previous day's actions.

After those brief preliminaries, the order of business commences and subsequent events of the day will occur under one or another of these "orders" unless a special order is entered by a majority vote. Each house reverts freely to a prior order of business when circumstances dictate, usually on motion of the majority leader, or at the request of a member granted if there is no objection heard. Barring these special orders and exceptions, both chambers move in sequence through the orders:

Senate and House (Joint Rule 4-1)

1. Communications and petitions
2. Reports of standing committees
3. Reports of select committees
4. Messages from the governor
5. Messages from the other house
6. Motions and resolutions
7. First reading and commitment of bills

8. Second reading of bills (committee of the whole)
9. Third reading of bills
10. Unfinished business
11. Special orders of the day
12. Announcement of committee meetings

Forms of Legislative Action

Bills: A proposal intended to be enacted as law is called a bill. The Montana constitution specifically forbids the legislature to enact any law except by a bill. When a bill is introduced, it is assigned a number designating it as "House Bill No. 1," or as "Senate Bill No. 53," depending upon the house of origin, and it retains this number through all the processes of the legislature. If enacted, it will ultimately be assigned another number, as a Chapter in the Laws and Resolutions of the session (the "session laws") published months later by the Secretary of State. Also it will be assigned a title and section number in the **Revised Codes of Montana, 1947**, and most persons concerned with it ultimately will refer to this title and section, rather than to the original bill number or to the chapter number in the session laws.

Resolutions: Legislative actions not designed to enact laws of general application commonly take the form of resolutions in one of two forms—simple (action of one house), and joint (action affecting both houses).

Many matters affecting internal administration of the legislature are determined by resolutions.

Simple Resolutions: This is a formalized motion passed by one house only which bears the heading "House Resolution" or "Senate Resolution." It may be used to amend the rules of one house or to express the desire, opinion, sympathy or request of the house adopting it. It does not require three readings or a roll call vote. A member offering a simple resolution may read it in his place before sending it to the chair. It is then read by the clerk or secretary unless otherwise ordered by the house, and referred to a committee. Final action is taken on the committee report. The transmittal of copies of simple resolutions is the responsibility of the chief clerk or secretary of the house of origin.

Joint Resolutions: This form is used to express the desire, opinion, sympathy or request of the Legislative Assembly, to amend the joint rules, and to ratify or propose amendments to the United States Constitution. It must be adopted by both houses, and then signed by the Governor as a ministerial formality. If a joint resolution goes beyond a mere recommendation or expression of opinion, and does not relate to a subject solely within the competence of the Legislative Assembly, it is subject to veto by the Governor. Except as otherwise provided in the joint rules, a joint resolution is treated in all respects as a bill.

How a Bill Becomes Law

Introduction: The first step in introduction of a bill is for the legislator to file an original and three type-written copies of the bill with the clerk of the house or secretary of the senate.

When a legislator indicates that a bill has been introduced "by request" he wishes to show that although he introduced it for someone, he assumes no responsibility for its subsequent fate.

Fiscal Notes: At the time of introduction, the presiding officer of either house requests a fiscal note for any bill other than appropriation measures carrying specific dollar amounts which he determines may have an affect on the revenues, expenditures, or fiscal liability of the state. The fiscal note shows, in dollar amounts, the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long range financial implications. A presiding officer's request for a fiscal note goes to the state budget director who prepares the note in cooperation with the agency, or agencies, affected by the bill. Within six days, the fiscal note is returned to the presiding officer who requested it who refers it to the committee considering the bill. Other fiscal notes may be requested before the fifty-fifth day and on the second reading by the committee considering a bill or a majority of the members of the house in which a bill is to be considered.

All bills except appropriations measures, revenue measures, and substitute bills must be introduced by 5 p.m. on the twentieth day of the session. Revenue bills must be introduced by 5 p.m. on the twenty-fifth day.

First Reading: Each bill must receive three "readings" before passage. The first reading is by title only, and occurs at the time of introduction. There is no discussion of the bill at this first reading which occurs immediately before it is referred to a committee.

Committee Action: All bills must be referred to a proper standing committee by the presiding officer. This reference, required by the constitution, comes after the first reading. Bills are mimeographed at this stage in sufficient copies for members and other interested persons.

The standing committee considers the bill, and may conduct public hearings at which interested persons have the opportunity to speak for or against the proposed legislation. Such hearings are scheduled by the chairman of the committee, often at the request of some interested person or group.

The final committee decision on a bill is usually made in executive session when neither private persons nor reporters are ordinarily present. The committee may recommend either passage or rejection of

the bill, or it may propose amendments. Indeed, the committee may redraft legislation and send its own handiwork to a house with a favorable recommendation. If a house or senate bill is introduced as a "committee measure," there must have been unanimous consent of the members of the committee.

If members of the committee are unable to agree upon a recommendation, separate minority reports may be presented, with statements of objection to the majority proposal. Whatever action is taken by the majority of a committee, all bills referred to the committee must be reported back to the house within seven days after reference to a committee, unless an extension of time is granted by the house itself.

Printing: If the committee report is favorable and a house adopts the report, the bill is referred to the bills committee which directs printing one thousand copies of the bill as reported by the committee. All bills referred to the bills committee must be reported within three days unless further time is granted by the house.

Second Reading (Committee of the Whole): All measures which have been reported by a standing committee must be considered on a second reading in committee of the whole before being given formal

consideration. Until the forty-eighth day, one day must elapse after printing of a bill and receipt of it by the house before it can be considered in committee of the whole.

Actually, the committee of the whole is merely the house sitting under different rules, with someone other than the speaker or president presiding, to debate bills on second reading. Either house resolves itself into this committee by a vote of a majority of a quorum, and in committee a majority of the elected membership constitutes a quorum. Bills are taken up in the order in which they appear on second reading except that bills for appropriations and revenue have precedence.

Every bill in committee of the whole must be read and considered section by section, although in practice reading is merely by section number. Any member may propose amendments.

The house of representatives at the beginning of a session usually sets a period of time for debate of a bill, readopting this arrangement from day to day. Speakers usually are given five minutes, and a member is allowed five minutes to explain any amendment he has proposed. The member next recognized may speak for five minutes in opposition to such amendment. This "five-minute" rule limits debate on particular amendments but in no way precludes further debate on an amendment to an amendment.

In the senate however, a member may speak as often as he can gain recognition, at length each time, unless some different rule was prescribed before going into committee of the whole.

Special restrictions on conduct in committee of the whole are contained in Joint Rules 6-25 through 6-30. A sitting of the committee is terminated by a motion "that the committee rise," or that it "rise and report progress and ask leave to sit again."

The chairman of the committee of the whole reports its recommendations on each bill to the house or senate. Prior to adoption of this report, motions are in order to segregate particular bills from the report, and to refer them back to a standing committee, with or without instructions. When the chamber formally accepts the favorable report of the committee of the whole on a bill, such acceptance places the bill on the calendar of bills ready for third reading and final disposition. House rules provide that when a report of the committee of the whole is rejected, the bill remains on second reading until disposed of.

Engrossment: When a favorable report on a bill by the committee of the whole has been adopted, the bill is sent to the bills committee with amendments attached, to be engrossed (retyped) with the amendments in the proper place. The committee re-

tains one correct copy of each bill. The bill is then placed on the calendar for third reading.

Third Reading: The third reading must not occur the same day as the first and second, except on the last day of the session, or under suspension of the rules. On the third reading, bills are not debated.

Second House: If the majority of the members present votes favorably, the clerk or secretary transmits the bill to the other chamber.

No bills except appropriations measures may be transmitted from one house to the other after the forty-second day of the session, and no amendments may be transmitted between the houses after the fifty-fifth day of the session. An exception is made for appropriation bills, revenue bills, and amendments. Special suspension of rules also permit other exceptions to these deadlines.

Conference Committee: A conference committee is a joint committee of an equal number of members from each chamber, appointed by the presiding officer to reconcile contested points of a particular measure. The committee meets at a time announced by the conference committee chairman (always a senator), and it attempts to find solutions for the disagreements existing between majorities of the two houses.

If a majority of the members of the conference committee from each house reaches an agreement,

the committee members report back to their respective houses. This report usually is a recommendation that a series of amendments be adopted. A majority of the members in each house must agree to final passage of the bill in the form proposed by the conference committee. The roll call vote of each house on the conference committee proposals is entered in its journal as in the case of final action on other bills.

Refusal of either house to accept a conference committee report means that the bill has failed to pass. When this happens, or when a conference committee reports that it is unable to reconcile differences between the houses, a bill may be sent to successive conference committees as often as both houses agree to establishment of a new conference committee.

Enrollment: When both houses have approved a bill in the same form, the bill goes to the bills committee, as outlined in Joint Rule 6-24, to produce a typewritten original and four duplicate copies of the bill in its final form prepared according to precise requirements. These enrolled copies must be free from all corrections and errors. This exacting process requires much time, and this is one of the principal reasons why it is necessary to "stop the clock" at the end of a session. Contrary to what may be a popular impression, the frenzied pressure of time at this juncture is more apt to be felt behind the closed doors

of the enrolling committee than in the legislative chambers.

The rules require that the authors of a bill must verify the accuracy of the enrolled bill. If the bill is a committee measure, its accuracy must be certified by the chairman of the sponsoring committee.

The original and one copy of each enrolled bill are signed in open session, first by the presiding officer of the house of origin and then by the presiding officer of the other chamber. In each instance the presiding officer arises and gives notice that he is about to sign the bill.

Transmittal to the Governor: The two signed copies of the enrolled bill are transmitted to the governor by the enrolling committee which prepared them, and transmittal is noted in the journal of the house of origin.

Action by the Governor: To become law, every bill passed by the legislature must be presented to the governor, who may do one of several things about the bill.

The governor may approve a bill and sign it, in which case it becomes law.

The governor may disapprove the bill, and return it to the house in which it originated, with a written statement of his objections. This is a veto, and the veto message is entered in the journal and read to the members. If a two-thirds majority of the members

present and voting favor passage of the bill over the veto, the bill is transmitted to the other house where the same two-thirds vote is required. These roll call votes on the question of passage over a veto are recorded in the journals.

If the governor fails either to approve or to veto a bill within five days (Sundays excepted) while the legislature still is in session, it becomes law without his signature.

The governor has fifteen days in which to act upon bills which are in his hands at the time of adjournment of the legislative session. Bills which he does not approve within fifteen days after the end of the session die by what is called a "pocket veto." The constitution requires the governor to file a statement of his objections to such bills in the office of the secretary of state.

The governor also possesses the power of "item veto" which permits him to withhold approval of particular items of bills making appropriations of money while granting approval of other portions of the appropriations measure. Matters subjected to this item veto may be repassed over the veto by a two-thirds vote of each house if the legislature still is in session.

Calculating the Odds

Table 4 indicates the "life expectancy" of bills introduced in each of the past ten legislative sessions. Figures for house bills include appropriations bills.

During the past two decades slightly more than one out of every three house bills introduced reached final enactment, while almost one-half of the senate bills became law.

TABLE 4

Enactment of Bills Introduced, 1947-65

	House Bills			Senate Bills			Total Bills		
	Introd.	Passed	Percent Enacted	Introd.	Passed	Percent Enacted	Introd.	Passed	Percent Enacted
1947	440	204	46.3	164	94	57.3	604	298	49.3
1949	451	146	32.3	139	63	45.3	590	209	35.4
1951	469	159	33.9	146	67	45.8	615	226	36.7
1953	374	134	35.8	220	116	52.7	594	250	42.0
1955	438	170	38.8	218	109	50.0	656	279	42.5
1957	481	158	32.8	223	90	40.3	704	248	35.2
1959	544	187	34.4	203	103	50.7	747	290	38.8
1961	470	156	33.2	207	80	38.6	677	236	34.9
1963	434	201	46.3	216	76	35.2	650	277	42.6
1965	540	206	38.2	229	99	43.2	769	305	39.7
Total	4,641	1,721		1,965	897		6,606	2,618	
Avg. %			37.1			45.6			39.6

6. FLOOR PROCEDURES

Motions

A legislative body makes decisions by acting upon motions put by members, who rise and secure recognition for this purpose. In the Montana legislature this is the practice:

Member (rising): "Mister President/Speaker?"

Presiding Officer: "The senator/gentleman from
-----?"

Member (standing): "Mister President/Speaker, I
move that . . . (stating the subject of his motion).

President Officer: Restates the motion; or if it is in
writing, has it read aloud by the secretary or
clerk.

Precedence of Motions

Some motions have priority over others, and the order of precedence is set by the joint rules. When a question is under debate only certain privileged motions will be entertained.

Joint Rule 5-2

- | | |
|------------------------------|---------------------------------|
| 1. To adjourn | 7. To postpone to a day certain |
| 2. For a call of the house | |
| 3. To recess | 8. To refer or commit |
| 4. Question of privilege | 9. To amend |
| 5. To lay on the table | |
| 6. For the previous question | 10. To postpone indefinitely |

Reports of rules, journal, bills, and conference committees are "privileged" and may be made at any time except when a vote is being taken or during a call of the house.

Debate

Discussion of measures is referred to as debate. Chapter 1 of the house, senate, and joint rules cover some aspects of the conduct of debate. Before a member may speak he must be recognized by the presiding officer.

In the house no member may speak more than thirty minutes in debate, and by agreement statements are usually limited to five minutes. Nor may a representative speak more than once on the same question without house approval.

Senators have no time limit, but no senator may speak more than twice on any one motion unless he has introduced or proposed the motion or question under debate. Senators who have spoken may not gain the floor before others who have not spoken.

In both houses it is customary to extend the privilege of closing debate to the author or authors of a measure, or to the maker of a motion, unless the house has voted to curtail further debate. A list of undebatable motions may be found in Joint Rule 5-8.

Terminating Debate

Debate is curtailed by the call for the previous

question: "I move the previous question," or simply, "Question." This motion, if recognized, cuts off all debate and brings a vote on the question. If a quorum is present a majority vote is sufficient for the motion to prevail. An exception occurs when the previous question is ordered on a question on which there has been no debate. In that case, the question may be debated for one-half hour by the proponents and for one-half hour by the opponents.

Amendments

When any principal question is under consideration amendments can be made to it, as well as an amendment to an amendment. But only one amendment may be under consideration at a time. Vote is first taken on the amendment to an amendment, then on the amendment, and finally on the original measure, each motion incorporating previous changes which have been adopted.

Voting

A member present in the chamber when a vote is taken is required to vote unless he has a direct or pecuniary interest, or has been excused for special cause.

Joint Rule 1-11 provides that when the presiding officer is a member of the house over which he is presiding, he shall vote as any other member and may not vote a second time.

Unanimous consent: The simplest mode of action is by unanimous consent, frequently used for routine procedural and noncontroversial matters. The presiding officer states that if there is no objection the question will be approved, or that the procedure indicated will be followed.

Voice vote: This often is sufficient to decide procedural or noncontroversial matters. The presiding officer declares: "As many as are in favor of....., say 'Aye' Opposed, 'Nay'" He then decides which side prevailed.

Division: A division vote is a tally of members for and against a measure, made without recording alignments of individual members. The presiding officer may ask for a division if he is uncertain how a voice vote should be decided, or a division may be requested from the floor. In the house, a division is taken on the voting machine, which tabulates totals for and against without recording the individual votes. As of 1967 the senate will also use an electric roll-call machine.

Roll Call: A roll call vote shows how individual members voted, and this vote is recorded in the journal. A roll call is required on final passage (third reading) for all bills. It may be ordered on other occasions at request of two members.

If a voting machine is used, members vote by pressing the desired button on their desk to record their vote. The electric voting machine records the vote of individual members, shows the votes of members by colored lights on the large display roll-call at the front of the chamber, and tabulates the totals. The presiding officer then declares the result of the vote, reporting the number of votes for and against. If there is no voting machine, a roll call vote is taken calling the names of members alphabetically.

In the house the speaker puts the question and rings a bell, declaring: "Those in favor vote yea and those opposed vote no." Or, on third reading, he declares: "This bill having been read three several times the question is, 'Should the bill pass?'" After a brief time, the speaker says, "Has every member voted?" Then after a reasonable pause he asks, "Does any member wish to change his vote?" After another pause he declares, "The clerk will now record the vote." Beginning in 1967, a voting machine will be used in the senate, and a similar procedure will be followed.

Pairing: Votes may be "paired," one for and one against, in a signed agreement. Pairing is permitted only when one of the paired members is absent when the vote is taken. Two members pairing their votes must submit a signed statement of the fact to the sec-

retary or clerk, and this agreement will remain in effect for the duration specified unless both members appear earlier to request its cancellation.

The Joint Rules also provide that three members may pair on matters requiring a two-thirds vote—two members paired "for" with one member "against."

Call of the House

Each house has a process to assure presence of a quorum and to compel presence of members for roll call votes (Joint Rules 2-10 through 2-13). If a quorum is present, "call of the house" may be demanded by fifteen members, and five senators may secure a call of their chamber. The sergeant-at-arms and pages move through the lobbies and corridors of the Capitol loudly announcing the call. Business of the chamber is suspended for a time, and then the roll is called to establish presence of a quorum. Doors to the chamber are closed to keep members in attendance for the roll call vote, and unexcused absences may be punished as contempt. When the purpose of the call has been achieved it may be terminated by a majority vote. In the absence of a quorum a majority of the members in either house may order a call of the house.

Adjournment

A motion to adjourn takes precedence over all other motions and may be made at any time except when a member has the floor, or during a vote, or in committee of the whole. It is not a debatable motion.

Any member may move to adjourn, but normally the majority floor leader or someone named by him is recognized to make this motion at the close of the session.

7. LEGISLATIVE POWERS:

A CONSTITUTIONAL OUTLINE

The Source and Extent of Legislative Power

Legal theory regards Montana's constitution, like that of other states, as an expression of the will of the electorate with respect to the authority of the legislature and of other agencies of the state government. In Montana, as elsewhere, the state constitution commands the legislature to do some things and forbids other things. In varying detail it spells out legislative responsibilities.

The legal starting point is that state legislatures may do anything which is not forbidden by the state constitution or by the United States constitution. For this reason, many constitutional provisions are phrased as restrictions upon legislative authority. The bare language of a constitutional phrase often reveals but a small part of its practical meaning. Much depends upon how legislative enactments have interpreted and amplified its meaning, upon the way courts have interpreted and amplified its meaning, upon the way courts have interpreted it, and indeed, upon customary practices and expectations which have never been proclaimed by either legislature or courts.

Recognizing the risk of oversimplification, the following pages present an outline of many of the im-

portant provisions of the Montana constitution that relate to the powers, duties and limitations of the Legislative Assembly. There is no attempt to take into account the effects of legislation, court decisions, or customs.

References in parentheses are to articles and sections of the Montana constitution.

General Legislative Power

Within the general framework of American federal relations, the state legislature has all "powers necessary for the legislative assembly of a free state," including the power to enact "all manner of wholesome and reasonable laws, statutes, and ordinances" within constitutional limits for the good and welfare of the state and of its people. That is to say, it may legislate upon all subjects which are not forbidden by the national or state constitution.

More specifically the Montana constitution authorizes the legislature to enact laws (V, 1), to propose amendment to the state constitution (XIX, 8, 9), and to exercise the right of eminent domain (XV, 9). In laws for the punishment of crime it may exact a death penalty, but such laws must be founded on principles of reformation and prevention (III, 24). The legislature is directed to enact liberal homestead and exemption laws (XIX, 4), to pass laws limiting hours of labor

(XVIII, 4), and to take a state census every ten years (XVI, 2).

With respect to its own internal processes the legislature is authorized to judge the elections and qualifications of its members (V, 9), to establish rules of procedure (V, 11) and to discipline its members and others for contempt or disorder (V, 11). It is to choose its own officers and employees (V, 28), and to keep a record of its proceedings (V, 12). Laws may be enacted only by bill, which may not be altered in course through either house to change the original purpose (V, 19). Legislative sessions must be public unless the nature of the proceedings requires secrecy (V, 13). A governor's veto of a bill may be overridden by a two-thirds vote of members present in each house (VII, 12). During an extraordinary session the legislature may enact laws only upon subjects named in the governor's call for the session (VII, 11). Legislators may not increase their own compensation during an elected term (V, 8).

General Limitations

The legislature may not enact laws:

- (1) Prohibiting freedom of speech (III, 10).
- (2) Providing for bills of attainder or ex post facto laws (III, 9, 11).
- (3) Impairing contractual obligations (III, 11; also U. S. Const. I, 10).

(4) Providing for special irrevocable privileges, franchises and immunities (III, 11).

(5) Suspending the writ of habeas corpus, except in cases of rebellion or invasion (III, 21).

(6) Abridging the rights of petition and of peaceful assembly (III, 26).

(7) Authorizing lotteries or gift enterprises of any sort (XIX, 2).

The popular powers of initiative and referendum must be recognized as a limitation, in some respects, upon the authority of the legislature (V, 1).

Local and Special Laws

The legislature may not pass local or special laws that apply to only one locality, person, or group (V, 26). Legislation on the following listed subjects must be of general applicability throughout the state:

(1) granting divorce

(2) laying out, opening, altering or working roads or highways

(3) vacating roads, town plats, streets, alleys or public grounds

(4) giving effect to informal or invalid deeds

(5) declaring any person of age, or authorizing any minor to sell, lease, or encumber his property

(6) chartering or licensing ferries, bridges, or toll roads

- (7) changing the law of descent
- (8) changing the names of persons or places
- (9) restoring to citizenship persons convicted of infamous crimes
- (10) "all other cases where a general law can be made applicable."

Fiscal Powers and Limitations

General Fiscal Provisions.—The legislature is authorized to levy taxes, to borrow, and to make appropriations of public funds to provide "the necessary revenue for the support and maintenance of the state." XII, 1). It is directed to provide funds for the compensation of public officers, to account for public funds, and to provide for the publication of the official financial transactions of the state.

All bills to raise revenue must originate in the house of representatives; however, the senate may propose amendments as in the case of other bills (V, 32).

General Fiscal Limitations.—There are a number of restraints imposed on the state assembly with respect to financial matters. Among the more important are the following:

- (1) General appropriation bills shall embrace only appropriations for the ordinary expenses of the three branches of government, interest on the public debt,

and for public schools. All other appropriations shall be made by separate bills (V, 33).

(2) No money may be paid out of the treasury except by lawful appropriation and on warrant by the appropriate public officer with the exception of interest on the public debt (V, 34).

(3) Except in certain public emergencies, legislative appropriations shall not be authorized in excess of the "total tax" provided by law, nor for a longer term than two years(XII, 12).

(4) Revenues from motor vehicle registration or fuel taxes shall not be diverted to purposes other than highway construction and maintenance (XII, 1).

(5) The legislature may not make any appropriation for any charitable, industrial, educational, or benevolent purpose where the agency or person receiving the grant is not under the "absolute control" of the state (V, 35).

(6) The legislature may not delegate power to any private commission, corporation, or association to supervise or interfere with the financial transactions of municipalities. (V, 36).

(7) The legislature may not pass any act authorizing the investment of trust funds by executors, administrators, guardians or trustees in the bonds or stock of any private corporation (V, 37).

(8) No liability or obligation of any person, association, or corporation, held or owned by the state, or any municipal corporation therein, may be exchanged, transferred, remitted, released, or postponed by act of the legislative assembly (V, 39). Such obligations may be extinguished only by lawful payment into the state treasury.

There are two major constitutional exceptions to this provision:

(1) The legislature may cancel the contractual obligation owned or held by a county, for certain forms of public relief, where the collection of such obligation is barred by the statute of limitations (V, 39).

(2) The legislature may cancel personal property taxes (if they are not a lien on real estate) in cases where the taxes have been delinquent for ten years or more (V, 39).

Taxation.—In exercising the taxing power, the legislature is authorized to:

(1) Levy a just and uniform tax on all forms of property (except those specifically exempted by the constitution or statutes of Montana). This includes a license tax on all organizations doing business in the state (XII, 1).

(2) Levy a graduated income tax on all persons, firms, and corporations within the state (XII, 1).

(3) Delegate to municipal corporations (cities, towns, etc.) the power to assess and collect taxes for corporate purposes. Such taxes may not be determined on an assessed valuation greater than the valuation used for county and state taxing purposes (XII, 4, 5).

(4) Pass all the laws necessary to carry out the foregoing powers (XII, 18).

With respect to the taxing power, the legislature may not:

(1) Impose taxes on property of the United States, the state, counties, towns, school districts, municipal corporations, places of worship, agricultural and horticultural societies, hospitals, and certain other institutions of a clearly charitable nature (XII, 2).

(2) Relinquish or suspend the power to tax corporations or corporate property (XII, 7).

(3) Take private property for sale to pay the corporate debts of public corporations (XII, 8).

(4) Levy taxes for any purpose other than one of a clearly public nature (XII, 11).

(5) Levy taxes at other than uniform rate on the same classes of property within the territorial limits of the authority levying the tax (XII, 11).

Public Officers

It is the responsibility of the legislature to prescribe the duties and salaries of public officers (V,

28), including specifically a state examiner (VII, 8) and a board of pardons (VII, 9). The governor's appointment of major public officers is subject to approval by the senate (VII, 7).

The legislature resolves a tied popular vote for a state elective officer by a joint ballot of the two houses, taken in the next regular session held after the state election (VII, 2).

Judicial districts may be reorganized, and their number increased or decreased by the legislature. But there must be at least one judge in each district, and no judge may be deprived of office during his elected or appointed term by any reorganization of districts (VIII, 14).

The legislature has authority to conduct impeachment proceedings against the governor and other state and judicial officers except justices of the peace. The house of representatives has sole power of impeachment, and this requires concurrence of a majority of of the elected members of the house. All impeachments are tried by the senate and a concurrence of two-thirds of the elected senators is necessary for conviction (V, 16, 17).

The legislature also may provide by law for removal from office for misconduct or malfeasance in office, of all public officers not subject to impeachment (V, 18).

The legislature is subject to the following limitations with respect to public officers:

(1) It may not extend the terms of any public officer, or increase or diminish his salary or emolument during his term of office (V, 31).

(2) It may not grant extra compensation to any public officer, servant, or contractor, after the performance of such services or after the execution of the contract for them (V, 29).

(3) It may not pass any local or special law increasing or decreasing the fees, percentages, or allowances of public officers (V, 26).

Counties, Cities, and Towns

Subject to constitutional requirement for submission to local vote of approval (XVI, 7), the legislature is authorized to:

(1) Provide, by general or special law, any form of municipal government it deems desirable for the counties, cities, and towns of the state (XVI, 7).

(2) Provide for the merger or consolidation of counties, cities, and towns under one government where deemed necessary (XVI, 7).

(3) Abolish the municipal government of cities or towns where it is deemed advisable to do so (XVI, 7).

(4) Prescribe the terms, qualifications, method of

appointment, and duties of the officers of these municipal governments (XVI, 6, 7).

(5) Fix and define the boundaries of the municipality.

The legislature may establish police and municipal courts and magistrates for cities and towns (VIII, 24).

The legislature may not relocate county seats of existing counties (XVI, 2), or levy taxes against counties, cities, and towns (XII, 2).

Voting

The legislature is authorized to:

(1) Enact registration and other laws necessary to secure honest elections (IX, 9).

(2) In addition to the restrictions imposed by the constitution, to define the manner of ascertaining the qualifications of voters (IX, 2).

(3) Define the qualifications of the elected officials of any municipal corporation (XVI, 7).

The legislature may not pass any local or special law concerning the conduct of elections (V, 26).

Education

The legislature is directed to:

(1) Establish and maintain a general and uniform system of free public schools (XI, 1).

(2) Provide, through taxation or other means, sufficient funds to maintain at least one free public school

in each district in the state for at least three months during each year (XI, 6).

(3) Provide that all elections for school district officers be separate from elections for all other state or county officers (XI, 10).

(4) Enact legislation to implement the Montana Trust and Legacy Fund for school purposes (XXI, 18).

The legislature may not:

(1) Pass any local or special law providing for the management of common schools (V, 26).

(2) Make any grant of funds to any private or church school (XI, 8).

Private Corporations

The legislature is authorized to:

(1) Provide general laws of incorporation for all corporations doing business in the state (XV, 2).

(2) Alter, revoke, or annul any charter of incorporation when deemed essential to the public welfare (XV, 3).

(3) Provide by law that stockholders of corporations doing business in the state shall have the right to vote, in the manner prescribed, for the directors or trustees of such organizations (XV, 4).

(4) Regulate, within the state, passengers and freight rates for common carriers (XV, 5, 7).

(5) Exercise the right of "eminent domain" over any private corporation when deemed necessary to the public welfare (XV, 9).

(6) Pass all laws necessary to prevent the growth and operation of "trusts" where such organizations have as their purpose the fixing of prices on certain commodities or the regulation of production of those commodities (XV, 20).

(7) Tax all corporations doing business in the state on both real and personal property, except those enjoying constitutional tax exemption (XII, 7).

The legislature may not:

(1) Pass any private or special laws granting corporate powers or privileges or releasing or extinguishing either in whole or in part, the indebtedness, liability, or other obligation of any person or corporation (XV, 17; V, 26).

Military

The legislature is authorized to:

(1) Provide for organizing and disciplining a state militia (XIV, 2).

(2) Provide funds for the maintenance of the militia (XIV, 3).

(3) Provide for the protection and safekeeping of public arms (XIV, 4).

(4) Request the aid of federal troops to suppress domestic violence (III, 31).

(5) Provide for the service of all legal processes of the state, both civil and criminal, upon all persons and property found within the United States military reservations in the state, in all cases where the jurisdiction of the United States is not exclusive (II, 1).

(6) Provide for the maintenance of a soldier's home for honorably discharged servicemen and members of the state militia disabled on active duty (X, 1).

The legislature is restricted with respect to military affairs in the following ways:

(1) No standing army may be kept by the state in time of peace, and no soldier may in time of peace be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law (III, 22).

(2) The military is required to be kept in strict subordination to the civil power of the state (III, 22).



SENATORIAL
ENRICHMENT
ROOM

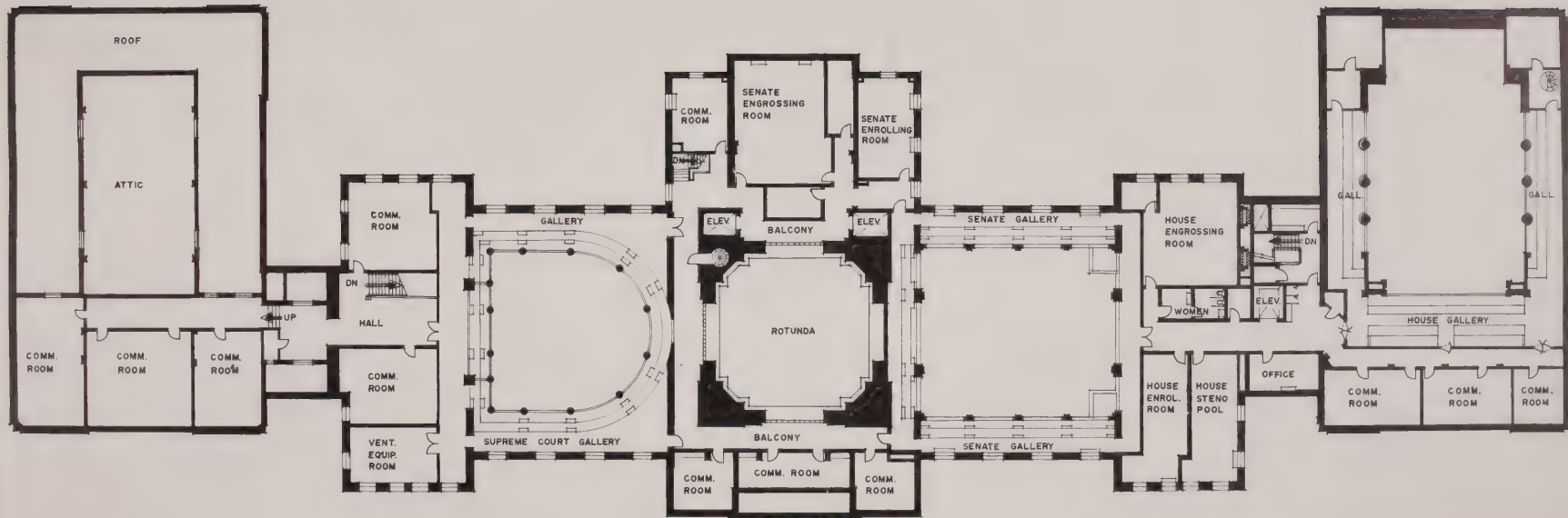


ELEVATOR



COMMON
ROOM

FOURTH



MONTANA STATE CAPITOL, FOURTH FLOOR

